

should be allocated only to recipients that are TR NO_x Annual units as of January 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such TR NO_x Annual allowances under § 97.421.

(3) If the Administrator already recorded such TR NO_x Annual allowances under § 97.421 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.424(b) for such control period, then the Administrator will deduct from the account in which such TR NO_x Annual allowances were recorded an amount of TR NO_x Annual allowances allocated for the same or a prior control period equal to the amount of such already recorded TR NO_x Annual allowances. The authorized account representative shall ensure that there are sufficient TR NO_x Annual allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such TR NO_x Annual allowances under § 97.421 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.424(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded TR NO_x Annual allowances.

(5)(i) With regard to the TR NO_x Annual allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such TR NO_x Annual allowances to the new unit set-aside for such control period for the State from whose NO_x Annual trading budget the TR NO_x Annual allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(a)(4) or (5) covering such control period, include such TR NO_x Annual allowances in the portion of the State NO_x Annual trading budget that may be allocated for such control period in accordance with such SIP revision.

(ii) With regard to the TR NO_x Annual allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this paragraph, the Administrator will:

(A) Transfer such TR NO_x Annual allowances to the new unit set-aside for such control period; or

(B) If the State has a SIP revision approved under § 52.38(a)(4) or (5) covering such control period, include such TR NO_x Annual allowances in the portion of the State NO_x Annual trading budget that may be allocated for such control period in accordance with such SIP revision.

(iii) With regard to the TR NO_x Annual allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this paragraph, the Administrator will transfer such TR NO_x Annual allowances to the Indian country new unit set-aside for such control period.

§ 97.412 TR NO_x Annual allowance allocations to new units.

(a) For each control period in 2012 and thereafter and for the TR NO_x Annual units in each State, the Administrator will allocate TR NO_x Annual allowances to the TR NO_x Annual units as follows:

(1) The TR NO_x Annual allowances will be allocated to the following TR NO_x Annual units, except as provided in paragraph (a)(10) of this section:

(i) TR NO_x Annual units that are not allocated an amount of TR NO_x Annual allowances in the notice of data availability issued under § 97.411(a)(1);

(ii) TR NO_x Annual units whose allocation of an amount of TR NO_x Annual allowances for such control period in the notice of data availability issued under § 97.411(a)(1) is covered by § 97.411(c)(2) or (3);

(iii) TR NO_x Annual units that are allocated an amount of TR NO_x Annual

allowances for such control period in the notice of data availability issued under § 97.411(a)(1), which allocation is terminated for such control period pursuant to § 97.411(a)(2), and that operate during the control period immediately preceding such control period; or

(iv) For purposes of paragraph (a)(9) of this section, TR NO_x Annual units under § 97.411(c)(1)(ii) whose allocation of an amount of TR NO_x Annual allowances for such control period in the notice of data availability issued under § 97.411(b)(1)(ii)(B) is covered by § 97.411(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated TR NO_x Annual allowances in an amount equal to the applicable amount of tons of NO_x emissions as set forth in § 97.410(a) and will be allocated additional TR NO_x Annual allowances (if any) in accordance with §§ 97.411(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each TR NO_x Annual unit described in paragraph (a)(1) of this section, an allocation of TR NO_x Annual allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2012;

(ii) The first control period after the control period in which the TR NO_x Annual unit commences commercial operation;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the TR NO_x Annual unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more TR NO_x Annual allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation.

(4)(i) The allocation to each TR NO_x annual unit described in paragraph (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of NO_x emissions during the immediately preceding control period.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the TR NO_x Annual allowances determined for all such TR NO_x Annual units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of TR NO_x Annual allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of TR NO_x Annual allowances determined for each such TR NO_x Annual unit under paragraph (a)(4)(i) of this section.

(7) If the amount of TR NO_x Annual allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such TR NO_x Annual unit the amount of the TR NO_x Annual allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of TR NO_x Annual allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(i) and (ii), of the amount of TR NO_x Annual allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each TR NO_x Annual unit eligible for such allocation.

(9) If, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated TR NO_x Annual allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such TR NO_x Annual allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced

commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of TR NO_x Annual allowances referenced in the notice of data availability required under § 97.411(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated TR NO_x Annual allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of TR NO_x Annual allowances determined for each such TR NO_x Annual unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated TR NO_x Annual allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such TR NO_x Annual unit the amount of the TR NO_x Annual allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated TR NO_x Annual allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for such control period, any unallocated TR NO_x Annual allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each TR NO_x Annual unit that is in the State, is allocated an amount of TR NO_x Annual allowances in the notice of data availability issued under § 97.411(a)(1), and continues to be allocated TR NO_x Annual allowances for such control period in accordance with § 97.411(a)(2), an amount of TR NO_x Annual allowances equal to the following:

the total amount of such remaining unallocated TR NO_x Annual allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.411(a) for such control period, divided by the remainder of the amount of tons in the applicable State NO_x Annual trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(iii), (iv), and (v), of the amount of TR NO_x Annual allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each TR NO_x Annual unit eligible for such allocation.

(12)(i) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations of a new unit set-aside for a control period in a given year under paragraph (a)(7) of this section, paragraphs (a)(6) and (9)(iv) of this section, or paragraphs (a)(6), (9)(iii), and (10) of this section would otherwise result in total allocations of such new unit set-aside exceeding the total amount of such new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (a)(7), (9)(iv), or (10) of this section, as applicable, as follows. The Administrator will list the TR NO_x Annual units in descending order based on the amount of such units' allocations under paragraph (a)(7), (9)(iv), or (10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will reduce each unit's allocation under paragraph (a)(7), (9)(iv), or (10) of this section, as applicable, by one TR NO_x Annual allowance (but not below zero) in the order in which the units are listed and will repeat this reduction process as necessary, until the total allocations of such new unit set-aside equal the total amount of such new unit set-aside.

(ii) Notwithstanding the requirements of paragraphs (a)(10) and (11) of

this section, if the calculations of allocations of a new unit set-aside for a control period in a given year under paragraphs (a)(6), (9)(iii), and (10) of this section would otherwise result in a total allocations of such new unit set-aside less than the total amount of such new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (a)(10) of this section, as follows. The Administrator will list the TR NO_x Annual units in descending order based on the amount of such units' allocations under paragraph (a)(10) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will increase each unit's allocation under paragraph (a)(10) of this section by one TR NO_x Annual allowance in the order in which the units are listed and will repeat this increase process as necessary, until the total allocations of such new unit set-aside equal the total amount of such new unit set-aside.

(b) For each control period in 2012 and thereafter and for the TR NO_x Annual units located in Indian country within the borders of each State, the Administrator will allocate TR NO_x Annual allowances to the TR NO_x Annual units as follows:

(1) The TR NO_x Annual allowances will be allocated to the following TR NO_x Annual units, except as provided in paragraph (b)(10) of this section:

(i) TR NO_x Annual units that are not allocated an amount of TR NO_x Annual allowances in the notice of data availability issued under §97.411(a)(1); or

(ii) For purposes of paragraph (b)(9) of this section, TR NO_x Annual units under §97.411(c)(1)(ii) whose allocation of an amount of TR NO_x Annual allowances for such control period in the notice of data availability issued under §97.411(b)(2)(ii)(B) is covered by §97.411(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated TR NO_x Annual allowances in an amount equal to the applicable amount of tons of NO_x emissions as set forth in

§97.410(a) and will be allocated additional TR NO_x Annual allowances (if any) in accordance with §97.411(c)(5).

(3) The Administrator will determine, for each TR NO_x Annual unit described in paragraph (b)(1) of this section, an allocation of TR NO_x Annual allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2012; and

(ii) The first control period after the control period in which the TR NO_x Annual unit commences commercial operation.

(4)(i) The allocation to each TR NO_x annual unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of NO_x emissions during the immediately preceding control period.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the TR NO_x Annual allowances determined for all such TR NO_x Annual units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of TR NO_x Annual allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of TR NO_x Annual allowances determined for each such TR NO_x Annual unit under paragraph (b)(4)(i) of this section.

(7) If the amount of TR NO_x Annual allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such TR NO_x Annual unit the amount of the TR NO_x Annual allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of TR NO_x Annual allowances in the Indian country new unit set-aside for such control

period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i) and (ii), of the amount of TR NO_x Annual allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each TR NO_x Annual unit eligible for such allocation.

(9) If, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated TR NO_x Annual allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such TR NO_x Annual allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of TR NO_x Annual allowances referenced in the notice of data availability required under § 97.411(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated TR NO_x Annual allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of TR NO_x Annual allowances determined for each such TR NO_x Annual unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated TR NO_x Annual allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such TR NO_x Annual unit the amount of the

TR NO_x Annual allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated TR NO_x Annual allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for such control period, any unallocated TR NO_x Annual allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated TR NO_x Annual allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(a)(4) or (5) covering such control period, include such unallocated TR NO_x Annual allowances in the portion of the State NO_x Annual trading budget that may be allocated for such control period in accordance with such SIP revision.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(iii), (iv), and (v), of the amount of TR NO_x Annual allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each TR NO_x Annual unit eligible for such allocation.

(12)(i) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations of an Indian country new unit set-aside for a control period in a given year under paragraph (b)(7) of this section, paragraphs (b)(6) and (9)(iv) of this section, or paragraphs (b)(6), (9)(iii), and (10) of this section would otherwise result in total allocations of such Indian country new unit set-aside exceeding the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (b)(7), (9)(iv), or (10) of this section, as applicable, as follows. The Administrator will list the TR NO_x Annual units in descending order based on the amount of such units' allocations

under paragraph (b)(7), (9)(iv), or (10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will reduce each unit's allocation under paragraph (b)(7), (9)(iv), or (10) of this section, as applicable, by one TR NO_x Annual allowance (but not below zero) in the order in which the units are listed and will repeat this reduction process as necessary, until the total allocations of such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

(ii) Notwithstanding the requirements of paragraphs (b)(10) and (11) of this section, if the calculations of allocations of an Indian country new unit set-aside for a control period in a given year under paragraphs (b)(6), (9)(iii), and (10) of this section would otherwise result in a total allocations of such Indian country new unit set-aside less than the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of the calculations under paragraph (b)(10) of this section, as follows. The Administrator will list the TR NO_x Annual units in descending order based on the amount of such units' allocations under paragraph (b)(10) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant source's name and numerical order of the relevant unit's identification number, and will increase each unit's allocation under paragraph (b)(10) of this section by one TR NO_x Annual allowance in the order in which the units are listed and will repeat this increase process as necessary, until the total allocations of such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§97.413 Authorization of designated representative and alternate designated representative.

(a) Except as provided under §97.415, each TR NO_x Annual source, including all TR NO_x Annual units at the source, shall have one and only one designated representative, with regard to all mat-

ters under the TR NO_x Annual Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all TR NO_x Annual units at the source and shall act in accordance with the certification statement in §97.416(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under §97.416:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each TR NO_x Annual unit at the source in all matters pertaining to the TR NO_x Annual Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each TR NO_x Annual unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under §97.415, each TR NO_x Annual source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all TR NO_x Annual units at the source and shall act in accordance with the certification statement in §97.416(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under §97.416,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and